

same trade route as that proposed by the applicant and so operate in a manner competitive with the specific service proposed by the applicant. Although persons seeking intervention need not call at the same specific ports proposed by the applicant by direct vessel calls, any filing based on intermodal service in opposition to an application shall demonstrate that such person regularly competes by intermodal service for cargo moving to or from ports in the service proposed by the applicant. The burden of demonstrating competition between the vessels of the person seeking intervention and those of the applicant will be with the person seeking such intervention. Leave to intervene will not be granted to those conducting a competing service on an intermittent or *de minimis* basis.

(2) Leave to intervene in opposition to applications under section 805(a) of the Act will be granted, as provided in the statute, to every person, firm, or corporation "having any interest" in such application.

§ 203.4 Replies.

Within ten (10) days after the date for filing answers, the applicant may file a reply specifically addressed to the issues raised in the answers and to oppose the grant to any petitioner of leave to intervene.

§ 203.5 Types of hearings.

(a) *Oral Evidentiary Hearing:* If, upon review of the application, answers, petitions to intervene and replies, the Administration determines that the proceeding involves a disputed issue of material fact which cannot be resolved on the basis of available information of record, and that the case is anticipated to involve the submission of extensive evidence, or the Administration determines that it is otherwise appropriate, the Administration may issue an order referring the case to an Administrative Law Judge for oral evidentiary hearing. Such hearing shall be conducted in accordance with the procedures set out in 46 CFR part 201. The Administration may resolve issues of intervention in such order or refer such issues to the Administrative Law Judge. The burden of establishing that there is a disputed

issue of material fact is upon the party seeking the oral evidentiary hearing.

(b) *Hearing on Submission of Written Evidence and Argument:* If, upon review of the application, answers, petitions to intervene and replies, the Administration determines that the proceeding involves a disputed issue of material fact which cannot be resolved on the basis of available information of record, but which is not anticipated to involve the submission of extensive evidence, the Administration may fulfill the hearing requirement in sections 605(c) and 805(a) of the Act by rendering a decision solely on the merits of papers submitted, provided that a full and true disclosure of the facts is made and such procedure is fair to all parties. The Administration may, in its discretion, direct the submission of briefs on legal issues together with evidence in written form, and/or the holding of oral argument before the Administration prior to issuing its final decision on the proceeding.

(c) *Show Cause Proceeding:* If, upon review of the application, answers, petitions to intervene and replies, the Administration determines that the proceeding does not or is not likely to involve a disputed issue of material fact or that if such facts exist they can be resolved on the basis of available information subject to official notice, and if the case is not anticipated to involve the submission of extensive evidence, the Administration may determine to handle the matter by show-cause proceeding. In that event, it will issue a decision setting out its tentative conclusions on all of the matters of fact and law at issue in the proceeding. A Notice summarizing such decision shall be published in the FEDERAL REGISTER in accordance with 46 CFR 201.72. Interested persons may file comments, including support or rebuttal for any matter officially noticed, within 30 days of the date of service of the tentative decision and responses to such comments shall be filed within ten days thereafter unless a shorter or longer period is provided by the Administration for such comments and answers.